



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 3, 2002

Mr. Kuruvilla Oommen
Assistant City Attorney
City of Houston - Legal Department
Post Office Box 1562
Houston, Texas 77251-1562

OR2002-6875

Dear Mr. Oommen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173002.

The City of Houston ("city") received a request for information regarding the March 2002 Hobby Airport request for proposals pertaining to a concessions contract. You claim that the requested information is excepted from disclosure under sections 552.104, 552.107, and 552.110 of the Government Code. You also notified the third parties whose proprietary interests may be implicated of the request for information and of their right to submit arguments to this office as to why the requested information should not be released.¹ See Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). We have considered the exceptions claimed and reviewed the submitted information.

Initially, we address your argument under section 552.104. Section 552.104 states that information is excepted from required public disclosure if release of the information would give advantage to a competitor or bidder. The purpose of this exception is to protect the

¹The third parties that were sent notices under section 552.305 were Pappas Restaurants, Inc. and CA One Services, Inc.

interests of a governmental body, usually in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal. *See, e.g.*, Open Records Decision No. 463 (1987). In these situations, the exception protects the government's interests in obtaining the most favorable proposal terms possible by denying access to proposals prior to the award of a contract. Generally, section 552.104 does not except bids from public disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision 541 (1990).

In this case, you inform us that the contract at issue has not been awarded and that negotiations are ongoing. We therefore conclude that the information submitted in Exhibits 5-A, 5-B, and 5-F is excepted from disclosure in its entirety at this time under section 552.104. We also find that the majority of the information in Exhibits 5-C and 5-D is excepted under section 552.104. However, we are unable to determine how release of a portion of the information in Exhibits 5-C and 5-D would give an advantage to a competitor or bidder to the detriment of the city's ability to obtain the most favorable terms possible. Therefore, as neither the city nor any third party has made other arguments for withholding this information, we conclude that the information we have marked in Exhibits 5-C and 5-D must be released to the requestor (see blue flags), with the exception of certain e-mail addresses contained therein. Section 552.137 provides that "[a]n e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Public Information Act]." Therefore, unless the relevant individuals have affirmatively consented to the release of their e-mail addresses, the city must withhold the e-mail addresses that we have marked under section 552.137 from the information to be released.

Finally, with regard to the information submitted as Exhibit 5-E, you argue that this information is excepted under section 552.107. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990). Upon review of the information in Exhibit 5-E, we agree that this information is protected under the attorney-client privilege, and therefore, it may be withheld from the requestor under section 552.107.

To summarize, all of the information in Exhibits 5-A, 5-B, and 5-F may be withheld from the requestor at this time under section 552.104.² In addition, the information in Exhibits 5-C and 5-D may be withheld under section 552.104 with the exception of the information we

²As we are able to make this determination, we need not address the arguments of CA One Services, Inc. for withholding portions of its proposal.

have marked for release. The e-mail addresses we have marked must be withheld from the requestor under section 552.137. The information in Exhibit 5-E may be withheld from the requestor under section 552.107.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

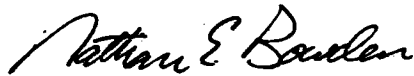
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/MAP/jh

Ref: ID# 173002

Enc. Submitted documents

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